IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 20880 of 2005
with
CIVIL APPLICATION No. 11993 of 2006

For Approval and Signature:

HONOURABLE **MS. JUSTICE R.M.DOSHIT**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

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UTTAR GUJARAT VIJ COMPANY LTD - Petitioner(s)
Versus
RATHOD ARUNBHAI BALDEVBHAI - Respondent(s)

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Appearance :
MR DIPAK R DAVE for Petitioner
MR RV DESAI for Respondent

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 15/11/2006

ORAL JUDGMENT

The petitioner, Uttar Gujarat Vij Company Limited [hereinafter referred to as, "***the Company***"];

a successor to the Gujarat Electricity Board [hereinafter referred to as, "***the Board***"], has preferred the present petition under *Articles* 226 & 227 of the Constitution of India against the judgment and award dated 5th May, 2005 passed by the learned Labour Judge, Ahmedabad in Reference [LCA] No. 1926 of 1993. By *impugned* award, the respondent no. 2 [hereinafter referred to as, "***the workman***"] has been ordered to be reinstated in service on the same post and on the same terms and conditions without any other service benefits or the wages.

At the outset, Mr. Dave has sought permission of the Court to place on record and rely upon two documents viz., the order of appointment of the workman as an Apprentice and the order relieving him on completion of the period of apprenticeship. Mr. Dave has candidly admitted that though the said documents were in possession of the Board, they were not produced before the Court below. He, however, has submitted that the said orders were referred to in the pleadings. The workman also has, in his evidence, admitted that he was appointed as an apprentice and that he was relieved after completion of the period

of apprenticeship. In the submission of Mr. Dave, the interest of justice requires that these two documents be permitted to be brought on the record.

Mr. Desai does not dispute the genuineness of the said documents. He, however, has objected the motion made by Mr. Dave. He has submitted that the Reference was pending before the Court below for more than than ten years. The Board was aware of the contentions raised by the workman. Nevertheless, the Board failed to produce any document on record. This Court should not allow the said documents to be brought on record at this belated stage and to permit the Board to fill-in the *lacunae*.

On perusal of the record, it appears that the workman did not disclose in the statement of claim that he was engaged by the Board as an apprentice and that he was relieved after completion of the period of apprenticeship. But, in his evidence, he did admit that he was engaged as an apprentice and that he was relieved after completion of the period of apprenticeship. In my view, therefore, no *prejudice* shall cause to the workman if the aforesaid documents are permitted to be brought on the record and to be

relied upon at this stage of the proceeding. I, therefore, allow the Company to rely upon the above referred two documents placed at Annexures "**A**" & "**B**" to the memo of the petition.

By Order dated 22nd March, 1982 [*Annexure "A" to the petition*], the workman was engaged as an apprentice in the Clerk Trade for a period of one year on monthly stipend of Rs. 275/= and on terms and conditions mentioned in the said order. On completion of the period of one year of apprenticeship, by Order dated 24th March, 1983 [*Annexure "B" to the petition*], the workman was relieved. It has also come on record that after completion of the apprenticeship, the workman did not take the trade test given by the National Council for Vocational Training nor did he secure the proficiency certificate issued by the said Council. Ten years after completion of the apprenticeship, the workman raised a dispute and claimed reinstatement in service with consequential benefits. Before the Court below, the workman submitted his statement of claim. According to the workman, he was employed by the Board as a Clerk for a monthly pay of Rs. 275/=; that on account of some

dispute the Board had with the father of the workman, the Board victimized the workman and terminated his service. Since then, he was unemployed. The claim made by the workman was contested by the Board. The Board denied that the workman was employed as a Clerk and that he was victimized. It was stated that the workman had been engaged as an Apprentice for the period from 25th March, 1982 to 24th March, 1983. On 24th March, 1983, he was relieved as an apprentice. The workman did not take the trade test. As he did not secure the proficiency certificate, he was not empanelled on the wait list. He was, therefore, not entitled to employment under the Board.

The Court below has held that the workman was "*the workman*" within the meaning of Section 2 (s) of the Industrial Disputes Act, 1947; that the Board had failed to produce any documentary or oral evidence in support of its pleadings. The workman was, therefore, entitled to reinstatement in service. However, considering the delay in raising the dispute, the learned Judge has refused the backwages.

Feeling aggrieved, the Company has preferred the present petition. Mr. Dave has submitted that the

Court below has erred in entertaining the dispute raised by the workman more than ten years after the date of cause of action. He has further submitted that in any view of the matter, the workman being an apprentice engaged under the Apprentices Act, 1961 [hereinafter referred to as, "***the Act of 1961***"], he had no right to employment under the Board. In support of his argument, Mr. Dave has relied upon the judgments of the *Hon'ble* Supreme Court in the matters of ***Assistant Engineer, C.A.D, Kota v. Dhan Kunwar*** [2006 AIR SCW 3571]; of ***Chief Engineer, Ranjit Sagar Dam & Anr. vs. Sham Lal*** [2006 AIR SCW 3574]; of ***Mukesh K. Tripathi vs. Senior Divisional Manager, LIC & Ors***. [(2004) 8 SCC 387]; of ***Chairman/MD, Mahanadi Coalfields Limited & Ors. vs. Sadashib Behera & Ors***. [(2005) 2 SCC 396] and of ***Dhampur Sugar Mills Limited vs. Bhola Singh*** [(2005) 2 SCC 470].

The petition is contested by Mr. Desai. He has relied upon the definition of the word ***"Workman"*** occurring in clause (s) of Section 2 of the Industrial Disputes Act, 1947 [hereinafter referred to as, "***the Act of 1947***"]. He has submitted that "*workman*" does include "*apprentice*". Therefore, the

workman has rightly been held to be "*the workman*". He has submitted that considering the delay, the learned Judge has carefully refused the benefit of backwages and has awarded reinstatement in service without the other service benefits. He has further submitted that this Court exercising its power of *judicial* review or supervision shall not re-appreciate the evidence nor should this Court interfere with the finding of fact recorded by the Court below. In support of his submission, he has relied upon the judgment of the Division Bench of this Court [*Coram* : ***Mr. Justice D.M Dharmadhikari***, C.J., *as he then was* & ***Mr. Justice P.B Majmudar***] in the matter of ***Balol Khan Doskhan Joya vs. GEB*** ***[***Letters Patent Appeal No. 121 of 2000 in Special Civil Application No. 546 of 1995 :: Decided on 09/01/2001]. He has also relied upon the judgments in the matter of ***Deputy Executive Engineer [Mechanical] vs. Sukhabhai Gandabhai & Ors.*** [2001 (2) GLH 551] and of ***Navsari District Panchayat & Anr. Vs. Sumanbhai Morarbhai Patel & Another Ors.*** [2003 (1) GLR 5].

16.11.2006

In the matters of Assistant Engineer,

C.A.D., Kota [Supra] and Chief Engineer, Ranjit Sagar Dam & Anr. [Supra], the *Hon'ble* Court has noted that the concerned workman had raised the industrial dispute after considerable delay i.e., of 8 to 9 years. Considering the said period, the *Hon'ble* Court quoted with approval, "..***As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact, it could be said that there was no dispute pending at the time when the reference in question was made.***" In both the cases, the Hon'ble Court held that there was no real dispute. The workmen should not have been granted relief.

In the matter of Mukesh K. Tripathi [*Supra*], the *Hon'ble* Court has examined whether an apprentice governed by the Act of 1961 can be said to be "*a workman*" within the meaning of Section 2 (s) of the Act of 1947. The *Hon'ble* Court, after considering the relevant provisions under the Act of 1961 and the Act of 1947 held that, "..***A "workman" within the meaning***

of Section 2 (s) of the Industrial Disputes Act, 1947 must not only establish that he is not covered by the provisions of the Apprentices Act but must further establish that he is employed in the establishment for the purpose of doing any work contemplated in the definition. Even in a case where a period of apprenticeship is extended, a further written contract carrying out such intention need not be executed. But in a case where a person is allowed to continue without extending the period of apprenticeship either expressly or by necessary implication and regular work is taken from him, he may become a workman. A person who claims himself to be an apprentice has certain rights and obligations under the statute.

In case any person raises a contention that his status has been changed from apprentice to a workman, he must plead and prove the requisite facts. In absence of any pleading or proof that either by novation of the contract or by reason of the conduct of the parties, such a change has been brought about, an apprentice cannot be said to be a workman."

In the matters of Chairman/MD, Mahanadi

Coalfields Limited & Ors. [*Supra*], and Dhampur Sugar Mills Limited [*Supra*], the Hon'ble Supreme Court has held that the apprentice engaged under the Act of 1961 do not have a right to be absorbed in service or to get employment on successful completion of apprenticeship training.

In the matter of Balol Khan Doskhan Joya [*Supra*], the Division Bench of this Court has held that an apprentice governed by the Act of 1961 would be covered by the definition of "*Workman*" under Section 2 (s) of the Act of 1947. It should be noted that in view of the above referred later judgments of the *Hon'ble* Supreme Court, the view expressed by the Division Bench of this Court is no longer a good law.

In the matter of Deputy Executive Engineer [*Supra*], the learned Single Judge of this Court has held that Section 25-F of the Act of 1947 applies to all workmen including the daily wage employees.

In the matter of Navsari District Panchayat [*Supra*], the learned Single Judge has discussed the scope of intervention by the Court in exercise of its power under *Articles* 226 and 227 of the Constitution.

Following the *Hon'ble* Supreme Court's view, it is held that, ...***interference with pure finding of fact and reappreciation of the evidence is held to be impermissible.***"

In the present case, the workman approached the Labour Court with a specific case that he was appointed by the Board as a Clerk for a monthly pay of Rs. 275/= and that on account of some tiff his father had with the Board, he was victimized and was retrenched from service. These pleadings of the workman are belied by his oral evidence. He has admitted that the litigation between his father and the Board which he had referred to ended in the year 1980 i.e., before the workman was engaged as an apprentice in the year 1982. He has also admitted in his oral evidence that he was engaged as an apprentice and that on completion of the period of apprenticeship, he was relieved. As held by the *Hon'ble* Supreme Court in the above referred cases, an apprentice cannot be held to be a workman within the meaning of Section 2 (s) of the Act of 1947, unless he proves to the contrary. Besides, Section 18 of the Act of 1961 specifically provides that, "..***every***

apprentice undergoing apprenticeship training in a designated trade in an establishment shall be a trainee and not a worker; and the provisions of any law with respect to labour shall not apply to or in relation to such apprentice." In the present case, the workman did not make out a case that by conduct of the parties or for any other reason, he had ceased to be an apprentice and had become a "*workman*" within the meaning of the Act of 1947. As held by the *Hon'ble* Supreme Court, the *onus* lay upon the workman.

In my view, the workman failed to discharge the burden to prove that he was a "*workman*" which lay upon him. In absence of such proof by the workman, the workman could not have been held to be "*a workman*" within the meaning of the Act of 1947. He being an apprentice, he had no right to employment in the Board. He, therefore, could not have been ordered to be reinstated in service as has been done by the learned Labour Judge.

In my opinion, the finding recorded by the learned Labour Judge is contrary to the evidence on record. Further, this is not a case where two views are possible and the Court below has preferred to

take one such view. This is a case where the Court below could not have held the workman to be a "*workman*" within the meaning of the Act of 1947. This is not a case where the workman could have claimed reinstatement in service as of right. In fact, the workman was never a servant of the Board i.e., no master and servant relationship was ever established between the Board and the workman.

It should also be noted that admittedly the apprenticeship of the respondent came to an end on 24th March, 1983. He did not raise any dispute until the year 1993. Thus, the dispute raised by the workman was grossly delayed. In fact, ten years after the cause of action, there could not have been an existing dispute between the Board and the workman. The workman has not explained the said delay at all. In absence of acceptable explanation, the learned Labour Judge ought not to have entertained a stale claim which was not pursued or was raised ten years after the date of the cause of action.

In view of the above discussion, the petition is allowed. The *impugned* judgment and award dated 5th May, 2005 passed by the learned Labour Judge,

Ahmedabad in Reference [LCA] No. 196 of 1993 is quashed and set-aside. Reference made at the instance of the workman is rejected. Rule is made absolute. The parties shall bear their own cost.

Learned advocate Mr. Dave has submitted that pending this petition, the Corporation has, in compliance with the provisions of Section 17-B of the Act of 1947, paid the workman the last wages drawn by him. Civil Application stands disposed of.

{Miss R.M Doshit, J.}

*Prakash**